



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**



ARNOLD  
SCHWARZENEGGER  
GOVERNOR

**For Meeting Date: July 10, 2008**

### **Agenda Item No. 2: Continued Review of the Adequacy of Santa Clara County's Response to the Board's 45-day Notice to Correct Deficiencies Issued October 2, 2007.**

**INTRODUCTION:** On April 13, 2006, the State Mining and Geology Board (SMGB) issued a 45-Day Notice of Deficiencies (Notice) to Santa Clara County (County) pursuant to Public Resources Code (PRC) Section 2774.4(c) of the Surface Mining and Reclamation Act (SMARA). At its September 13, 2007, regular business meeting, the SMGB determined to rescind the Notice issued on April 13, 2006, in consideration of the efforts the County made to work toward correcting the deficiencies, and re-issue a new Notice which would allow additional time for the County to address outstanding deficiencies that remained. Since issuance of the initial Notice in April 2006, the County has taken steps to improve its overall performance. The County has acquired a team of specialists to perform annual mine inspections, it has taken steps to assure that environmental documents and studies required pursuant to the California Environmental Quality Act (CEQA) were implemented, it has required establishment of revised and adequate financial assurances, and it has caused for the preparation of adequate amended reclamation plans, as deemed appropriate. Being considered is whether the County has corrected all deficiencies as outlined in the October 2, 2007 Notice to the satisfaction of the SMGB.

Exhibits containing information and documents from the County, from the Department of Conservation's Office of Mine Reclamation (OMR), and interested parties are attached to this report. A summary of Exhibits are provided below:

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|-----------|--|
| Exhibit A | County's Submittals and Correspondence   |
| Exhibit B | Public Comments and Documents Regarding Lexington Quarry<br>(Los Gatos Hillside Preservation League)             |
| Exhibit C | Public Comments and Documents Regarding Permanente Quarry<br>(City of Cupertino, West Valley Citizens Air Watch) |
| Exhibit D | 2007 Inspection Reports  |
| Exhibit E | Summary of Financial Assurances Adjustments  |
| Exhibit F | Summary of Compliance/Enforcement Documentation  |

**BACKGROUND:** The SMGB's interest in the overall performance of the County as a lead agency pursuant to SMARA initiated with a public complaint received in 2005. Since such time, all sites within the County have been visited by personnel from OMR, the County has implemented numerous



*Executive Officer's Report*

steps to re-establish public trust, and the County assures that it has been fulfilling its obligations and responsibilities as a lead agency under SMARA. A brief synopsis is provided below.

SMGB Response to Public Complaint: On March 22, 2005, the SMGB received correspondence and documentation from the Los Gatos Hillside Preservation League (LGHPL). This group of Los Gatos citizens and residents expressed concern about environmental threats to their surrounding area as a result of surface mining operations being performed at the Lexington Quarry, Santa Clara County, California. Specific issues raised by the LGHPL outlined a number of out-of-compliance related issues. In addition, the LGHPL also questioned the County's ability to administer SMARA in an appropriate manner and in accordance with SMARA and the SMGB's regulations. At the request of the SMGB, OMR performed two site visits to the Lexington Quarry, and summarized their results in a draft report dated July 12, 2005. Three violations were readily apparent, and several corrective measures were noted. The issues noted in the report prepared by OMR raised other issues pertaining to the County's performance as a lead agency. Between July 2005 and June 2006, OMR evaluated the overall performance of the County as a lead agency, and at the SMGB's June 8, 2006, regular business meeting OMR presented final conclusions of their review and monitoring of the County's mine inspection activities.

Issuance of 45-Day Notice of Deficiencies: Based on issues raised by the LGHPL, receipt of information and numerous documents over a sixteen-month period from residents of the County and the County's administrative staff, and OMR's report, the SMGB at its April 13, 2006, regular business meeting moved to issue a 45-Day Notice to the County pursuant to the provisions contained in Public Resources Code (PRC) Section 2774.4(c) of SMARA.

At its July 13, 2006, regular business meeting, the SMGB heard a summary of the ten deficiencies and twenty-two findings as set forth in the Executive Officer's report, and heard from representatives of the County and other interested parties. In summarizing what progress the County had made, the Executive Officer noted that the County had corrected some deficiencies by simply conducting mine inspections, requiring submittal of annual written calculations of financial assurance amounts, and reviewing the financial assurances, for all surface mining sites within their jurisdiction. However, of the sites cited as having deficiencies, at least five were considered to be significantly out-of-compliance with SMARA, with their noted deficiencies as cited in the 45-Day Notice having not been adequately addressed by the County. It was the conclusion of the Executive Officer that the County's SMARA program was deficient and had not been corrected such that it met the intent of the Legislature, as expressed in Article 1 of the SMARA. The Executive Officer noted that the County had not corrected in a timely manner the deficiencies cited in the 45-Day Notice and thus recommended that the SMGB find that the County has not satisfactorily met the statutory conditions of PRC 2774.4.

The County expressed its sincere desire to fully address the deficiencies and findings, and the SMGB moved to defer consideration of the SMGB Executive Officer's findings regarding this matter until its September 14, 2006, regular business meeting; whereas, it would hear again from the County as to what steps were being taken to address all noted deficiencies and findings.

At its regular business meeting held in September 2006, the SMGB moved to defer action on whether the SMGB would assume from the County certain lead agency authority for one year, with a



progress report to be provided by the County in six months. The County's progress report was presented to the SMGB at the scheduled March 8, 2007, regular business meeting

At its September 13, 2007, regular business meeting, the SMGB after hearing testimony from representatives of the County, industry, mine operators and the public, moved to rescind the 45-Day Notice issued on April 13, 2006, in consideration of the efforts the County made to work toward correcting the deficiencies. However, the SMGB directed the Executive Officer to issue a revised 45-Notice which would allow additional time for the County to address deficiencies that remained outstanding. The revised 45-Day Notice was issued on October 2, 2007, and it identified six (6) outstanding deficiencies. Since issuance of the initial Notice in April 2006, the County has had over two years to correct the deficiencies outlined in the initial 45-Day Notice.

**EXECUTIVE OFFICER'S FINDINGS:** The October 2, 2007, 45-Day Notice of Deficiencies noted six areas of on-going deficiencies. Upon review of information provided by the County, and contained within mine files maintained by OMR, the following findings per deficiency are provided:

**Deficiency 1:** During the period from 2000 through 2005, the County failed to perform an annual review, adjustment or recalculation of the financial assurance amounts for eight mine sites in 2001, and all nine sites for the years 2002, 2003 and 2004 (Category 1 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Sections 2773.1(a)(3) and 2774(b)):

Azevedo Quarry  
Calaveras Quarry  
Curtner Products  
Freeman Quarry (Mine activity commenced in 2002)  
Permanente Quarry  
Lexington Quarry  
Polak Pit Quarry  
Serpa Pit  
Stevens Creek

**The County has adequately addressed this deficiency.** Financial assurances have been reviewed and adjusted for all nine surface mining operations. A summary of OMR's review of financial assurance cost estimates is provided in the following table:



CA Mine ID#	Site Name	FACE Amount (initial)	FACE Amount (current)	OMR Review	OMR Determination
91-43-0001	Curtner Quarry	\$558,181	\$785,862	Pending	Not approved
91-43-0002	Serpa Quarry	\$288,821	\$488,930	06/27/08	Approved
91-43-0003	Azevedo Quarry	\$249,980	\$397,507	06/27/08	Approved
91-43-0004	Hanson Permanente	\$7,570,047	\$9,208,771	06/27/08	Approved
91-43-0005	Polak Quarry	\$30,866	\$100,397	06/27/08	Approved
91-43-0006	Lexington Quarry	\$755,568	\$532,381	06/27/08	Approved
91-43-0007	Stevens Creek Quarry	\$829,45	\$829,435	06/05/08	Approved
91-43-0008	Calaveras Quarry	\$154,387	\$155,115	Pending	Not Approved
91-43-0010	Freeman Quarry	\$577,890	\$966,284	06/27/08	Approved

**Deficiency 2:** The County failed to take steps to make adjustments to the financial assurance mechanisms promptly following increases in the financial assurance amounts for two mine sites (Category 1 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Sections 2773.1(a)(3) and 2774(b)):

Calaveras Quarry  
Azevedo Quarry

**The County has adequately adjusted the FACE for the Calaveras Quarry and Azevedo Quarry.** The financial assurance cost estimate for the Calaveras Quarry was reviewed and approved by OMR; whereas, the financial assurance cost estimate for the Azevedo Quarry was adjusted and is currently under review by OMR.

**Deficiency 3:** The County failed to require mine operators to submit amended reclamation plans as a result of observed SMARA violations for at least two mine sites (Category 1 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2774(b) and 2774.1(a)):

Lexington Quarry  
Permanente Quarry

**The County has adequately addressed this deficiency which required mine operators to submit amended reclamation plans for certain sites, notably, for the Lexington Quarry and Permanente Quarry.** OMR has received seven amended reclamation plans to date (Curtner Quarry, Serpa Quarry, Azevedo Quarry, Hanson Permanente Quarry, Lexington Quarry, Stevens Creek Quarry, and Freeman Quarry). The County has one other amendment under review (Calaveras Quarry), which the County intends to submit to OMR for review and comment at the appropriate time. In January 2007 OMR found the amended reclamation plan for Hanson Permanente Quarry to be deficient and required detailed plans be submitted at the



appropriate time, which is dependent on the CEQA process and is subject to detailed geologic analysis. When completed, the County will provide OMR a copy of the CEQA document regarding the Lexington Quarry, and thus, provide OMR an opportunity to comment on the amended reclamation plan. Upon review by OMR, no comments were provided on amended reclamation plans for the Curtner Quarry, Azevedo Quarry and Freeman Quarry. OMR provided comments to the County regarding Stevens Creek Quarry on June 27, 2008. Comments from OMR regarding the Serpa Quarry are pending.

Lexington Quarry: The County indicates that an amendment to the reclamation plan for the Lexington Quarry was originally submitted in 2001. The County required the operator to provide an amended reclamation plan which was received on July 29, 2002, to address in part encroachment beyond the boundary of the approved reclamation plan. Another amended reclamation plan was requested and received on August 31, 2006. Two additional re-submittals have been provided, the latest one received by the County in June 2008. Where mining has been conducted outside the footprint of the approved reclamation plan and/or the site can no longer be reclaimed in a manner consistent with the approved reclamation plan (PRC Section 3502(e)), an amended reclamation plan must be prepared and submitted for approval. This requirement is also applicable to the Stevens Creek Quarry.

Hanson Permanente Quarry: An amended reclamation plan was submitted to the County by the operator in January 2007, and referred to OMR for review and comment in April 2007. Numerous comments have been received and completion of the amended reclamation plan is pending the results of ongoing geological study. In addition, the CEQA process has been initiated.

**Deficiency 4:** The County failed to perform SMARA mine inspections for eight of the nine mine sites in 2001, although the County performed annual SMARA inspections for all nine mine sites from the years 2002 through 2005. However, the quality of the inspections is uncertain. Notably, the County failed to issue any violations from 2001 through 2005 (Categories 2 and 4 violations pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2774(b) and 2774.1(a)):

Curtner Products  
Serpa Quarry  
Azevedo Quarry  
Hanson Permanente Quarry  
Polak Pit Quarry  
Lexington Quarry  
Stevens Creek Quarry  
Calaveras Quarry  
Freeman Quarry

In regards to the Lexington Quarry, three violations were reported by the Office of Mine Reclamation's (OMR) in their July 2005 inspection report for the site; whereas, the County's inspector referenced such violations but provided no quantification or description of the violations. The County did not issue a notice of violation.



**The County has adequately addressed this deficiency which required the County to implement appropriate enforcement actions upon conduct and review of site inspection reports.** Based on review of the 2007 inspection reports and information provided by OMR, eight (8) violations were reported (some reflecting a grouping of select violations); whereas, areas of concern that should have been noted as violations is on the order of thirty-two (32) violations (this total reflects four violations that have since been reported to have been abated). Additional violations should have been noted at time of inspection for all nine sites. A summary of compliance/enforcement actions implemented by the County is summarized below:

CA Mine ID#	Site Name	Violations Issued	Violations Not Issued
91-43-0001	Curtner Quarry	1	3
91-43-0002	Serpa Quarry	none	4
91-43-0003	Azevedo Quarry	none	3
91-43-0004	Hanson Permanente	2	3
91-43-0005	Polak Quarry	none	2
91-43-0006	Lexington Quarry	2	3
91-43-0007	Stevens Creek Quarry	1	4
91-43-0008	Calaveras Quarry	2	9
91-43-0010	Freeman Quarry	none	1

Adequacy of Inspection Reports: The following general comments pertain to adequacy of inspection reports and emphasize areas that could be improved to benefit the County in facilitating its SMARA program in an efficient and effective manner:

CCR Section 3504.5(f) of the SMGB's regulations state:

*"Inspections may include, but shall not be limited to the following: the operation's horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; samples of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9."*

CCR Section 3504.5(g) also states *"The inspection report to the lead agency shall consist of the inspection form MRRC-1...and any other reports or documents prepared by the inspector or inspection team...The lead agency shall provide a copy of the completed inspection report along with the lead*





*agency's statement regarding the status of compliance of the operation to the director within 30 days of completion of the inspection...* ”

Adequate inspection reports are the foundation upon which a determination for adjusting the financial assurance is made, and how administrative and compliance/enforcement actions to be considered by the lead agency (County), are clearly identified. The following general observations are offered:

- Reference to Compliance/Enforcement Triggers: No reference, or in some cases inadequate reference, to reclamation or performance requirements as set forth in the approved reclamation plan, Conditions of Approval, or permit requirements, are referenced in the inspection reports. The inspection reports will benefit if specific performance standards and conditions noted in the approved reclamation plan and Conditions of Approval are specifically referenced and/or quoted (i.e., all slopes should not be steeper than 2H:1V). Without such references, the inspection report upon review fails to assure the County upon review that site conditions as observed meet the requirements of the approved reclamation plan, Conditions of Approval, and permit requirements. It should be noted that some sites have over 50 Conditions of Approval, many of which are relevant to reclamation and the conduct of an inspection such as steepness of slopes, setbacks, safety requirements, and revegetation performance standards.
- Quantification of Site Conditions: SMGB regulations (CCR Section 3504.5(f)) states that “*Inspections may include, but shall not be limited to the following: the operation's horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; sample of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.*” Some of the surface mine slopes in the County are hundreds of feet in height (ranging up approximately 700 feet), and are characterized as over steepened and unstable due to evidence of active landslides and potential safety hazards. Some slopes are situated upon adjacent property outside the boundaries of the approved reclamation plan. Inspection reports need to quantify the current configuration of cut slopes and reclaimed slopes, including certain geologic parameters such as existing height of slopes and steepness or gradient, quantification of erosion features, amount of off-site encroachment, and volume of waste piles.
- Adequate Identification of Violations: Violations or substantial deviation from the existing approved reclamation plan or any Conditions of Approval are typically determined at time of inspection (i.e., encroachment of disturbed land beyond the reclamation plan boundary).



The County subsequently determines upon review of the inspection report whether enforcement or other actions are warranted. Without specific violations being noted, the County acting as the SMARA lead agency may not in a position to consider and implement the appropriate SMARA compliance/enforcement action(s).

- Annotated Images: The inspection reports will benefit if annotated photographs showing general site conditions and operations, and notably, specific areas of concern (i.e., violations, corrective measures and recommendations) are included.

Enforcement of SMARA: The following general comments pertain to adequacy of the County's compliance/enforcement efforts and emphasize areas that could be improved to benefit the County in facilitating its SMARA program in an efficient and effective manner:

*PRC Section 2774.1(a) states "...if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise conformed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after that date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities."*

PRC Section 2774.1 et seq. also provides the administrative procedure for the issuance of Notices of Violation (NOV), Orders to Comply (OTC), and administrative penalties, if appropriate, following issuance of a NOV. PRC Section 2774.1(b) states "*An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or board for orders issued by the director, concerning the alleged violation. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance which the lead agency or director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.*" The County elected to issue a combined OTC and NOV for the Permanente Quarry, Lexington Quarry and Stevens Creek Quarry, to "allow for speedier resolution of the issues."

- Identification of Violations: Identification of violations based on site inspections, and the issuance of NOVs, OTCs and administrative penalties, when appropriate, is an





important element of the SMARA process available to the lead agency to assure compliance with SMARA. The County issued combined OTC and NOV to three operators: Permanente Quarry, Lexington Quarry and Stevens Creek Quarry. The County modified the administrative procedures in the issuance of NOVs and OTCs, *“to allow for a speedy resolution of the issues”*. The County should in the future follow the administrative procedures as noted pursuant to PRC 2774.1(b).

- Based on review of the 2007 inspection reports and information provided by OMR, eight (8) violations were reported; whereas, areas of concern that should have been noted as violations is on the order of thirty-two (32) violations (this total reflects four violations that have since been reported to have been abated). This discrepancy reflects 1) the County grouping some violations, and 2) certain site conditions not being specifically noted as violations including over-steepened slopes, unstable slopes, encroachment beyond setbacks, encroachment beyond the approved reclamation plan footprint, inability to revegetate over-steepened slopes, inadequate soil erosion preventive measures, and adverse impact to adjacent off-site watersheds. The County would benefit if each violation is specifically identified, in lieu of grouping of such violations.

**Deficiency 5:** The County failed to enforce and seek forfeiture of the financial assurances of the Calaveras Quarry upon its abandonment by the operator (Category 4 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2773.1(b)).

**The County has adequately corrected this deficiency.** The financial assurance cost estimate of about \$154,387 was deemed adequate and approved by the County on October 5, 2007, and subsequently considered adequate by OMR on November 28, 2007.

**Deficiency 6:** The County failed to enforce and request from the operator of the Calaveras Quarry commencement of reclamation activities upon expiration of the Interim Management Plan (IMP) in August 2003 (Category 3 and 4 violations pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2770(h)(6)).

**The County has adequately corrected this deficiency.** Upon expiration of the IMP in August 2003, the operator was requested by the County in correspondence dated November 18, 2003, as well as verbally during subsequent meetings, and during conduct of the 2004 and 2005 site inspections, that the operator must either provide a new IMP or commence reclamation. Following three sequential amended reclamation plan submittals in May 2006, August 2006 and June 2007, which were all deemed inadequate by the County, a NOV was issued on August 6, 2007. The NOV required submittal of information as part of an amended reclamation plan for approval consideration, and to commence reclamation within 30 days. An Order to Comply was issued on October 12, 2007. No administrative penalties have been considered by the County.

During conduct of site inspections performed on November 27, 2007, and February 8, 2008, reclamation activities were observed to have commenced. Such activities have been delayed due to unresolved slope stability issues, and determination of the actual acreage to be included within the



amended reclamation plan footprint. The County plans to request assistance from OMR to further resolve these outstanding issues.

**CONSIDERATIONS BEFORE THE SMGB:** The SMGB may consider the following determinations:

1. The SMGB may determine that the County has, to the SMGB's satisfaction, fully corrected the deficiencies cited in the 45-Day Notice within the statutorily permitted 45-day period, or that no deficiencies existed at the time the Notice was issued. If the SMGB makes this determination, then the issue of the County's SMARA compliance for the purposes of this Notice shall be removed from further SMGB consideration.

[or]

2. The SMGB may determine that the County has not corrected, to the SMGB's satisfaction, the deficiencies cited in the SMGB's 45-Day Notice within the statutorily permitted 45-day period. If the SMGB makes this determination, then statute provides that the SMGB shall hold a public hearing within the County's jurisdiction to receive oral and written evidence from interested parties as to which of the County's SMARA authorities (except for permitting) the SMGB should assume as authorized under PRC Section 2774.4(a).

[or]

3. The SMGB may determine that the County has made a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and has made favorable progress in addressing those deficiencies contained in the SMGB's 45-Day Notice to Correct Deficiencies which was issued to Santa Clara County dated October 2, 2007. Thus, the SMGB could consider continued monitoring of the County's progress by staying the process, and directing its Executive Officer to schedule this matter for a future date (i.e., July 2009) to hear a progress report on the County's SMARA program.

**EXECUTIVE OFFICER'S RECOMMENDATION:** In summary, the County has made significant progress in fulfilling its responsibilities and obligations as a lead agency pursuant to SMARA, and facilitating compliance among the surface mining operations within its jurisdiction. The County is conducting site inspections at least once each calendar year, and adjusting the financial assurances annually, as appropriate. Several areas for improvement have been identified and considerations to enhance its overall program and efforts have been provided in this Executive Officer's report.

Several issues have been raised by residents adjacent to the Lexington Quarry and the Hanson Permanente Quarry. Documents outlining these issues are provided as Exhibits to this report. Should the County not address these issues in an appropriate manner, SMARA provides a mechanism in which the Director of the Department of Conservation (DOC; or OMR on behalf of DOC) can consider issuance of a 15-Notice. PRC Section 2774.1(f) states:



*“The lead agency has primary responsibility for enforcing this chapter and Section 2207. In cases where the board is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the director pursuant to this section only after the violation has come to the attention of the director and either of the following occurs:*

- (1) The lead agency has been notified by the director in writing of the violation for at least 15 days, and has not taken appropriate enforcement action.*
- (2) The director determines that there is a violation which amounts to an imminent and substantial endangerment to the public health of safety, or to the environment...”*

When imminent and substantial endangerment exists, PRC Section 2774.1(d) states:

*“If the lead agency or the director determines that a surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the director, may seek an order from a court of competent jurisdiction enjoining that operation.”*

In summary, it is the Executive Officer's opinion that the County's performance as a lead agency has much improved and is considered to be functioning at a level above the state average. Thus, it is the Executive Officer's recommendation that the SMGB rescind the 45-Day Notice.

**SUGGESTED MOTION LANGUAGE:** The SMGB may consider the following motion language:

[Should the SMGB determine that, to its satisfaction, no deficiencies remain uncorrected]

**Motion No. 1:** *Mr. Chairman, I move that the Board, in light of the evidence presented before the Board today and contained in the Administrative Record of this meeting, find that those violations and deficiencies contained in the Board's 45-Day Notice to Correct Deficiencies issued to Santa Clara County dated October 2, 2007, have been corrected to the satisfaction of this Board, and that no further action is required by this Board in regards to the October 2, 2007, Notice.*

[or]



*Executive Officer's Report*

[Should the SMGB determine that it is not satisfied, and that deficiencies remain uncorrected, then the following two motions are required]

**Motion No. 2a:** *Mr. Chairman, in light of the evidence presented before the Board today and contained in the Administrative Record of this meeting, I move that the Board adopt the findings and analyses contained in the Executive Officer's Report, and that the Board find that those violations and deficiencies contained in the Board's 45-Day Notice to Correct Deficiencies issued to Santa Clara County on October 2, 2007, have not been corrected to the satisfaction of this Board.*

[and]

**Motion No. 2b:** *Mr. Chairman, in light of the Board's adoption of the previous motion, and pursuant to Public Resources Code Section 2774.4, I move that the Board hold a Public Hearing to determine to what extent (i.e., inspections, financial assurance review, enforcement actions, all authority excluding permitting, etc.) the Board will assume Santa Clara County's lead agency authority at the Board's September 11, 2008, meeting.*

[or]

[Should the SMGB determine that the County has made significant progress, but certain deficiencies remain uncorrected, the following motion can be considered]

**Motion No. 3:** *Mr. Chairman, I move that the Board, in light of the evidence presented before the Board today and contained in the Administrative Record of this meeting, find that the County has made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and has made favorable progress in addressing those violations and deficiencies contained in the Board's 45-Day Notice to Correct Deficiencies issued to Santa Clara County on October 2, 2007, and that the Board stay the Notice and continue to monitor the County's progress.*

Respectfully submitted:

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Stephen M. Testa  
Executive Officer



*Executive Officer's Report*